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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,132	10/23/2001	B. Scott Driggs	020174C-002910US	2449
20350	7590	11/18/2003	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			KEASEL, ERIC S	
		ART UNIT		PAPER NUMBER
		3754		
DATE MAILED: 11/18/2003				

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/045,132	DRIGGS ET AL.
	Examiner Eric Keasel	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 5-11 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in Paper No. 7 is acknowledged.
2. Claims 5-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Groups, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Specification

3. The use of the trademark MYLAR and PYRALUX have been noted in this application. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks (see MPEP 608.01(v)).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Biegelsen et al. (US Patent Number 5,971,355).

Biegelsen et al. disclose a valve comprising six elastomeric layers (see column 6, lines 14 and 15 for the material selection). The embodiment is Fig. 10 has two sets of electrodes that open and close the valve when a potential difference is applied.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biegelsen et al. in view of Gravesen et al. (US Patent Number 5,452,878).

Biegelsen et al. disclose a valve comprising six elastomeric layers (see column 6, lines 14 and 15 for the material selection). The embodiment is Fig. 10 has two sets of electrodes that open and close the valve when a potential difference is applied. Although Biegelsen et al. briefly mentions micromirrors, there is no clear teaching of a reflective micromirror surface positioned over the ceiling of the flow channel with a physical orientation of the reflective micromirror surface altered when the ceiling of the flow channel is driven into the flow channel.

Gravesen et al. disclose the use of a micromirror surface on lever (33) on a similar microvalve (see Figs. 8a-9 and column 4, lines 51-58). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the micromirror surface of Gravesen et al. over the ceiling of the flow channel with a physical orientation of the micromirror surface altered when the ceiling of the flow channel is driven into the flow channel in order to effect a deliberate change-over of light paths using the actuation device as taught by Gravesen et al. (see column 4, lines 55-58).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ekstrom et al., Cabuz, Berlin et al., Hartley, and Biegelsen et al. ('534) disclose similar devices.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (703) 308-6260. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

Eric Keasel 11/08/03
Eric Keasel
Examiner
Art Unit 3754